



MINUTES
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT

January 17, 2007

7:00 p.m.

TOWN COUNCIL CHAMBERS

94 Ashfield Road
Atherton, California

REGULAR MEETING

Mayor Alan Carlson called the meeting to order at 7:00 p.m.

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL

PRESENT: James R. Janz
Jerry Carlson
Charles E. Marsala
Alan B. Carlson
Kathy McKeithen

City Manager Jim Robinson was absent due to illness (excused) and City Attorney Marc Hynes was present.

3. PRESENTATIONS

New Explorer Scouts

Police Chief Bob Brennan introduced three new Police Explorer Scouts, Ms. Jessica Gutterrez, Troy Wickett, and Kelli DeVlugt, and administered the Oath of Office.

4. COUNCIL REPORTS

- **Council Member McKeithen said the Town's Emergency Preparedness Subcommittee met earlier that evening where a discussion took place regarding the interaction between the community groups and the Atherton Police Department and the Menlo Park Fire Protection District during an emergency. The subcommittee would be meeting with the new Fire District Chief, Harold Schapelhouman. In February, a proposal for laptop computers in police cars, an update of the electrical analysis for the Police Department generator to possibly serve the Emergency Operations Center (EOC), and the Disaster**

Preparedness manual for Atherton would be coming before the subcommittee. The Transportation/Traffic Subcommittee met and discussed Selby Lane, which was almost completed. The traffic study for Holbrook Lane determined there were approximately 120 more vehicles on that block as compared to parallel blocks. Rather than installing signs, speed bumps, or traffic detours, the light at the intersection of Middlefield and Marsh Roads would be adjusted. The issue would be revisited in two months.

- Council Member Jerry Carlson attended various League of California Cities activities: the Peninsula Division dinner in Colma where the revised by-laws were passed; the Peninsula Division reception for new Council Members in Mountain View; and a Boot Camp for new Council Members in Sacramento. He would like to implement some of the suggestions he heard: 1) a weekend workshop for goal setting in a casual atmosphere with an outside facilitator; 2) a Council “Tune-up” to discuss procedures and how to make council meetings more efficient, as well as the performance evaluation of the City Manager/City Attorney that might include performance measures and what should be assessed. He noted there was a League of California Cities meeting in Monterey, July 25-28, 2007, where small workshops were offered on various topics.
- Vice Mayor Janz attended the General Plan Committee last week where the basement ordinance and the issue of garages in basements were discussed. Direction was given to staff to prepare the ordinances to go first to the Planning Commission and to the Council in March. He attended the Legislative Committee meeting of the San Mateo County Housing Endowment and Regional Trust (HEART). Together with the Board of HEART, the Cities/County Association of Governments (C/CAG), and the Association of Bay Area Governments (ABAG), the Legislative Committee would work to have a unified approach to legislation it wanted passed in Sacramento, e.g., pro housing legislation. He attended a meeting of the Regional Housing Allocation Policy Advisory Committee. All the cities and the County of San Mateo formed a sub-region to deal with the state mandated housing allocation requirements. The plan was to produce a methodology by June 2007 to use for allocation within the County. Over the next year, a process of appeals and approvals would take place whereby ABAG and all the cities within the County, and ultimately the state would approve the methodology.
- Council Member Marsala attended the Environmental Programs Committee meeting where the U.S. Mayors’ Climate Protection Agreement was unanimously approved and would come before the Council in February. The Committee began planning for Earth Day, which would be expanded to include displays on environmental energy reduction, energy awards for home construction and home retrofit, etc. He attended the “swearing in” of Harold Schapelhouman, Fire Chief, of the Menlo Park Fire Protection District. The City of Menlo Park built a new EOC, and the Town of Atherton needed to assign someone to the EOC in the event of a disaster, which would improve the ability of the Town to receive resources. He hosted an event for those who completed CERT training. There were 60 people trained within the Town. He attended the League of California Cities meeting and was assigned to represent

San Mateo County on the Employee Relations Subcommittee. The Governor created a task force to work on pension issues. He attended the Grand Blvd Task Force meeting, Council Member Marsala asked staff for clarification regarding construction parking on one particular site. He suggested that staff develop an email list for residents to be informed about General Plan Committee meetings. He believed the Town would need to review the Non-School Event Guidelines in the future as some of the rules were overly restrictive.

- **Mayor Alan Carlson wanted to review how the Council did business. He requested a general item called, “Council Procedures,” be added to the next agenda to discuss items such as a standardized format for staff reports, Council Committee Assignments, etc. He requested that all agendas of all committees be included in Council’s packet. As the Mayor, he would be more procedurally oriented in an attempt to make meetings more efficient.**

5. PUBLIC COMMENTS

There were no public comments.

6. STAFF REPORTS

- **City Attorney Marc Hynes reported out of Closed Session as follows:**

A. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9

Town of Atherton vs. Sequoia Union High School District, et al.

No reportable action.

B CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subsection (b) of Government Code Section 54956.9:

One (1) potential case

No reportable action.

C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to subsection (c) of Government Code Section 54956.9:

Seven (7) potential cases

No reportable action.

City Attorney Hynes responded to Council Member Janz that under the penalty provisions of the Atherton Municipal Code, section 15.40, relative to parking plans, the Police Department was authorized to cite and the Building Official was authorized to issue a "Stop Work" order if the parking plan was not observed.

- Public Works Director Duncan Jones said the paving of Selby Lane was completed and the stripping would be completed as weather permitted. Valparaiso Avenue paving would begin the next day. Federal funds for the Holbrook-Palmer Park bridge were approved, as well as the matching funds from the Atherton Dames. A grant for alternative matching funds might be forthcoming which would enable the project to be expanded into some Atherton Channel restoration. The Pavilion projects were completed with the exception of minor "touch-up" work.
- Deputy Town Planner Lisa Costa Sanders noted that the Environmental Programs Committee and the General Plan Committee scheduled a Joint Meeting for February 7, 2007, to discuss green buildings.

7. COMMUNITY ORGANIZATION ROUNDTABLE REPORT

None

CONSENT CALENDAR (Items 8 – 11)

MOTION - to approve the Consent Calendar as presented.

M/S McKeithen/Janz

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

8. APPROVED MINUTES OF THE SPECIAL CLOSED SESSION MEETING OF DECEMBER 11, 2006, AND THE SPECIAL CLOSED SESSION AND SPECIAL MEETINGS OF DECEMBER 13, 2006

9. APPROVED BILLS AND CLAIMS FOR DECEMBER 2006 IN THE AMOUNT OF \$ 1,402,996

10. ACCEPTED MONTHLY FINANCIAL REPORT FOR DECEMBER 2006

11. APPROVED MAYOR'S 2007 CITY COUNCIL COMMITTEE ASSIGNMENTS

PUBLIC HEARINGS (Items 12, 13)

12. APPEAL OF THE DECISION OF THE PLANNING COMMISSION REGARDING A MAJOR ALTERATION PERMIT AT 51 LABURNUM ROAD UNDER ORDINANCE NO. 567, THE ARTIFACT ORDINANCE

Deputy Town Planner Lisa Costa Sanders presented the staff report. The City Council adopted an ordinance to protect artifacts and structures within the Town that were associated with the early development of the Town before 1930 or associated with the

Flood estate prior to 1937. The ordinance required a Major Alteration Permit, approved by the Planning Commission, to relocate an artifact or structure within the Town. The Planning Commission granted a Major Alteration Permit to relocate the urns from the Laburnam site to Park Lane. An appeal was submitted by Phil Lively, individually and on behalf of the Lindenwood Homes Association, requesting the City Council overrule the Planning Commission decision and deny the permit based on three points: 1) The Planning Commission had the authority to deny the permit; 2) the relocation of the artifacts were inconsistent with the Secretary of the Interior's Standards and Codes; and 3) the Planning Commission was unable to consider the general welfare and balance the interests of the community with those of the property owners. There was no evidence that the urns were in their original location and maintained integrity of setting. Laura Jones, historic consultant, indicated that the applicants' proposal was consistent with the Secretary of the Interior Standards (SIS) and with the Town's ordinance. Staff evaluated the request for relocation against the SIS and the ordinance and determined that the application met the purpose and intent of the ordinance. Staff's and Ms. Jones' professional opinion was that the relocation of the urns in Atherton would not be contrary to the purpose and intent of the General Plan and was consistent with the intent of the ordinance. Staff recommended that the Council conduct the public hearing and make the findings to deny the appeal and approve the Major Alteration Permit.

Laura Jones, historic consultant, said the critical issue regarding the urns was the setting, i.e., how significant was the setting. The urns had been moved at least once and possibly more. The urns currently existed in isolation in the backyard of a modern home and did not have a relationship with any other artifact from the Flood estate. She found it difficult to say their setting had any relationship to what was left of the historic landscape of Linden Towers. The period of significance for the Flood estate ended in 1937. The issue was whether the urns had a relationship to Linden Towers, not whether they were inside or outside Lindenwood. Since the urns were not in their historic setting, there was no historic setting that needed to be preserved.

Mayor Alan Carlson said the public hearing was a matter that could result in action reviewable by a Writ of Mandate in the California Superior Court. He asked if any Council Member had a conflict or disclosure. He disclosed that he spoke with both the appellant and the property owners regarding the procedure to be followed that evening and clarified his residence was not within 500 feet of the subject property.

Council Member McKeithen said she was contacted by a resident of the Lindenwood Homes Association but indicated she would not discuss the issue until the hearing.

Council Member Jerry Carlson initiated a telephone contact with each of the Planning Commissioners. The president of the Lindenwood Homes Association and the owner of the artifacts contacted him. He visited the site.

Vice Mayor Janz received a voicemail from Mr. Lamb inviting discussion or questions. He replied by voicemail that he had reviewed the materials and did not need to discuss the issue.

Council Member Marsala received a call from Mr. Lamb but did not discuss the issues. He placed a call to Mr. Lively on other related issues.

Mayor Carlson asked the members of the Council, based on the their disclosures that evening, if anyone would not be able to make a fair and/or impartial decision. No one replied. He clarified the hearing that evening was legally called a “*de novo*” hearing, which meant the City Council was reviewing the matter as if it were one of first impression. The Council was not reviewing the action of the Planning Commission and was not bound by the decision of the Planning Commission. The Council was bound by the evidence in the record and any additional evidence received in the public hearing. The Council would request the City Attorney to draft any findings at the conclusion.

In response to Council questions, Ms. Jones said the urns were included on the original Atherton Heritage Association list as an object of study in the inventory and were associated with the Flood estate. There were two categories of objects included in the inventory: those for which owner’s consent was received and detailed evaluations were prepared, and those objects that were included in the original list, were not studied, but were presumed to be potentially significant because they met at least the local criteria. The urns were not studied because the property owner did not give consent. Ms. Jones said there was evidence that the urns were associated with Linden Towers. The historical inventory document established the relationship with the Flood estate. She continued to clarify questions of the Council regarding aspects of the inventory, the ordinance, the historic significance of the Flood estate, historic preservation practices, historic districts, etc. The Lindenwood area was not found to be historic by the inventory because it did not exist before 1937. As a district, Lindenwood only had local significance and did not meet the national or state criteria because it lacked integrity. It tied together a set of objects that had a historical association with one another.

After further discussion and questions, Mayor Carlson clarified that through the procedures of the ordinance, Atherton Municipal Code section 8.14.070, the intent was that an inventory of historical artifacts would be created. Staff had not taken action to create an inventory by exercising the procedures of section 8.14.070 before the Planning Commission. The way an artifact became listed on the inventory was by initiation of the Planning Commission, by any resident of the Town who filed an application with the Planning Commission, or by the owner of the artifact. None of these had occurred with respect to the urns. The property owner had no ability to object to including an artifact on the inventory; however, the property owner could request non-disclosure on the “official” inventory to which the public had access.

Mayor Carlson opened the public hearing.

Philip Lively, Hawthorne Drive, appellant, read from a publication that described Lindenwood as a historic district. He noted that the Town’s ordinance was passed to: “Balance concerns of property owners with the community’s interest in preserving

artifacts of the Town's past and to foster civic pride and beauty and character of the Town and accomplishments of its past." He believed the urns met all three criteria of the ordinance, i.e., historical artifacts of local significance to the Town of Atherton and the Lindenwood Historic District, and should not be removed from their site. Additionally, he believed that the removal of the artifacts was not consistent with the SIS and should have been denied by the Planning Commission. He took exception to staff's recommendation to the Planning Commission that the ordinance required approval of a Major Alteration Permit. The ordinance stated, "approve or deny." In drawing an analogy with the Heritage Tree Ordinance, he noted that a replacement tree could ultimately grow to heritage size; once an artifact was removed, the historic line was lost forever. He believed the Planning Commission was given bad advice that resulted in the 2-1 vote for approval. He quoted from the Town's General Plan and noted that approval of the permit was contrary to and violated the Land Use Element, Goals and Objectives, Paragraph 1.210, Paragraph 1.223, and Paragraph 4.232. Approval of the appeal would follow the wording and intent of the General Plan. Additionally, under the ordinance, Council recognized as locally significant the Lindenwood Historic District and its artifacts. He stated that the urns were historical artifacts that were linked to the Flood estate and Linden Towers and met the criteria for local significance. For these reasons, he urged Council to approve the appeal and deny the Major Alteration Permit.

Timothy Hopkins, Esq., Groom & Cave, LLP, represented the property owners, believed the point of the discussion was that the artifacts were significant for what they were, not where they were. The reality was that the ordinance was trying to protect artifacts within the Town. His clients requested moving the artifacts from one place in Town to another place in Town. They wanted to preserve the artifacts and spent money to restore them. They were willing to have the artifacts added to the inventory as a condition of the Major Alteration Permit. The staff report stated that the request was consistent with the ordinance and consistent with the SIS and an expert was present who explained why that was correct and who recommended the appeal be denied and the permit be upheld. The Planning Commission exercised discretion and the staff's recommendation was just that, a recommendation not an edict. He believed the record was very clear, and he urged the Council to deny the appeal.

The following Atherton residents spoke in support of approving the appeal and denying the Major Alternation Permit:

Gerda Ungermand
Herman Christensen
Malcom Dudley
George Shaheen
Ron Peyton
Marion Oster
Bob Oster

Kristi Waldron, Planning Commissioner, noted the first opportunity she had to review the ordinance was when she had to enforce it. The Planning Commission had not been given the opportunity to review or discuss the ordinance due to the expiration of the

moratorium. She urged Council to send the ordinance to the Planning Commission for the proper procedural review. She stated the City Attorney advised her she did not have discretion to deny the Major Alteration Permit; therefore, she voted to approve the relocation of the urns. However, her comments for the record indicated she did believe the urns or other historic artifacts linked to the Flood estate should not be relocated from Lindenwood. Had she voted her conscience, she would have denied the permit. She urged Council to preserve the Lindenwood artifacts and approve the appeal.

Robert Andrews, Planning Commissioner, had recused himself from the Planning Commission discussion of the matter. He urged Council to deny the removal of the urns from Lindenwood. If the urns were removed, they would be taken out of their historical context and the visual history would be destroyed. He believed the statement made by the City Attorney biased the decision process and might have influenced the vote of the Planning Commission. Additionally, he believed moving the urns would be counter to the intent of the ordinance to be consistent with the SIS. He urged the Council to approve the appeal.

Mayor Carlson closed the public hearing.

Mayor Carlson was strongly in favor of a historic ordinance and believed it to be a product of compromise; however, he was initially concerned whether or not the Town had jurisdiction over the urns. Based upon the concession of the property owners' representative, he was satisfied that the Town did have jurisdiction over the urns. He asked the City Attorney, whatever the vote might be, to make a specific finding that the urns were subject to the ordinance. He believed the ordinance did contemplate movement of artifacts within the Town, which was one of the compromises in the ordinance resulting from the General Plan Committee meetings. Several facts were not in question: 1) the urns were not in their original location; 2) the urns were not in public view; and 3) the urns were repaired by the property owners. The City Council was being asked to exercise its powers to take, in essence, what was private property. Due process was required which meant going by what was written in the ordinance. A criterion of the ordinance for a Major Alteration Permit which included relocation within the Town, was for the Planning Commission to review the request for consistency with the SIS for the treatment of historic properties and the California Historic Building Code. He asked Ms. Jones why she viewed the relocation of the urns as not consistent with the SIS.

Ms. Jones said the underlying assumption of the SIS was that the setting was historic. Because the urns had been relocated behind a 1990s house, she could not find that the setting was historic. She also could not find that the Lindenwood neighborhood, in its entirety, was historic, and it did not meet the standards at a national or state level. She did recognize that Lindenwood was a special place and contained a collection of artifacts. She applied a high standard to her practice and tried to remember the conversations that took place to not make the ordinance burdensome, to allow flexibility, and the compromises that were reached to move the ordinance forward. The SIS were guidelines and were meant to be interpreted. The SIS were not specific

regarding artifacts that had been moved nor the moving of objects from landscapes that had been significantly altered.

Council Member Carlson noted there were competing values. He respected the Lambs' efforts to restore and safeguard the objects and there was a fairness aspect if the permit was denied. He empathized with the Lindenwood neighborhood wanting to keep the artifacts in the Lindenwood area. He believed there was a local interpretation and the fact that Lindenwood and the Flood estate were overlaid. He saw both sides of the issue. He believed his responsibility was to serve the interests of the public as a whole.

Vice Mayor Janz agreed with Council Member Carlson's comments. He asked the City Attorney what latitude the City Council had in making a determination of the appeal.

City Attorney Marc Hynes stated the City Council was given authority in the Atherton Municipal Code, Chapter 17, relative to appeals, to uphold, reverse, or modify the decision of the Planning Commission. The ordinance required that the Council make findings to support the determination. If the Council were to find in favor of the appeal, written findings would need to be prepared to justify that. The purpose of the findings was to show what the Council relied on to conclude that keeping the artifacts in Lindenwood was more important to their preservation than allowing them to be moved.

Vice Mayor Janz believed the Council could make a determination that the value of the urns was greater where they were presently located than if they were moved and kept within the spirit and intent of the General Plan and the ordinance. On the other hand, the ordinance clearly contemplated moving an object within the Town. He suggested the ordinance be rewritten to state the artifacts needed to stay in Lindenwood regardless of the outcome that evening.

Council Member Marsala had great appreciation for all the artifacts in Lindenwood and viewed it as a loss if the urns were moved. He again suggested creating a foundation to solicit funds to purchase objects on a voluntary basis as opposed to creating divisiveness within the Town. If the urns were moved, they might be able to be reacquired into Lindenwood at another time.

Council Member McKeithen agreed with the property owners' attorney when he said the staff report was merely a recommendation to the Planning Commission and not a mandate; it could either follow the recommendation or not. She agreed with Ms. Jones that the issue was difficult and there were differences of opinion. However, the Lindenwood Historic District had meaning, i.e., there was local significance given to the property in that district. She quoted from the SIS regarding neighborhoods and settings and concluded the Flood estate was a historic setting, and the critical aspect was the urns proximity to the Flood estate.

Mayor Carlson questioned if Council granted the appeal and the urns could not be moved, whether that was, in essence, taking property without compensation.

City Attorney Hynes responded if Council granted the appeal, the urns did not become the property of the Town or the public. All that was being said was that the urns could not be moved.

Mayor Carlson listed the points that were of concern to him: 1) the ordinance contemplated the movement of historic artifacts within the Town, which was an express compromise under the ordinance where people were concerned about property rights vs. the competing interests of the public; 2) allowing the urns to be moved was not precedent setting since each request would be heard on a case-by-case basis; 3) the urns were not on public display; and 4) there were lesser standards that could find the movement inconsistent with the SIS.

Vice Mayor Janz believed if the Council decided that the urns could not be moved, findings could be made to substantiate that decision. The property owners would need to decide what they would do next, perhaps donate them to the Town or the Lindenwood Homes Association or sell them to either. He disagreed that the Town would lose tract of the urns if they were moved. He suggested that a memorandum be recorded that stated where the urns were and that there was an obligation under the ordinance that they could not be moved out of the Town.

MOTION – to approve the appeal, and deny the Major Alteration Permit for the relocation of two historical artifacts from 51 Laburnam Road to 224 Park Lane in Atherton

Mayor Carlson offered an amendment to the motion that the property owners receive fair compensation for the artifacts from the Town of Atherton. There was not second to the amendment; therefore, the amendment failed.

M/S McKeithen/J.Carlson Ayes: 4 Noes: 1 (Marsala) Absent: 0 Abstain: 0

City Attorney Marc Hynes said he would return at the next meeting with findings for the Council to adopt.

Mayor Carlson called for a recess at 10:30 p.m. The meeting was reconvened at 10:35 p.m.

13. APPEAL OF THE DECISION OF THE BUILDING OFFICIAL REGARDING HOUSE CONSTRUCTION – 172 AUSTIN AVENUE (APN 059-293-060)

Deputy Town Planner Lisa Costa Sanders presented the staff report. The property owners filed an appeal regarding a proposed new residence at 172 Austin Avenue. The appellants asserted that the former Building Official advised them they could remove the nonconforming structure and construct a new residence utilizing the nonconforming setbacks. Based on that information, the property owners submitted

plans to the Building Department. The current Acting Building Official informed the property owners that the proposed plans were in violation of the setback requirements. The existing home was single-story, constructed with a 24 foot setback on the west and a 15 foot setback on the east side yards. The current setback requirements for the lot were 35 feet, and the existing home encroached 11 feet into one side and 20 feet into the other side. The appellants proposed to completely demolish the existing home and construct a new residence with the nonconforming setbacks. The new structure would encompass the same building envelope within the nonconforming area. Staff's interpretation of Municipal Code section 17.44 did not allow continued use of a nonconforming setback once the nonconforming structure was removed. Staff indicated the nonconforming walls could be completely retained and an addition could be constructed within the current setback requirements. The property owners could not completely remove the walls and rebuild within the nonconforming setbacks. They had an option to remove the existing residence and build a new structure within the conforming setbacks. Staff recommended that the Council conduct the public hearing, deny the appeal, and uphold the Building Official's decision.

Mayor Alan Carlson asked the City Attorney whether the Council would, in essence, be granting a variance if it granted the appeal.

City Attorney Marc Hynes said he did not believe there was the ability to seek a variance on the lot. Under the appeal provisions of the Zoning Code, Council had the power to consider an appeal of any action taken by the Building Official. If Council granted an appeal, findings would need to be made to support the rationale.

Mayor Carlson opened the public hearing.

Suzanne Epstein, 172 Austin Avenue, appellant, stated she and her husband had designed their house in compliance with everything told to them by the former Building Official. They began the process three years prior and had several meetings with the former Building Official and their architect. The appellants were initially planning to retain the existing walls in the nonconforming setbacks but were advised to tear down the old walls and foundation and replace them with new built-to-current Building Code walls and foundation because it would be better for them and for Atherton. They were told inspections would be easier and the department would save time and money by not having to post an employee at the site to monitor the demolition. In May 2006, the former Building Official told the Epsteins their final plans and design were fine and to submit the package for the building permit. The final plans were submitted to the Town in September 2006. The plans were not reviewed for two months and when the appellants called, they were told the plans were rejected because they were building a new home in the setbacks. Ms. Epstein said they acted in good faith, doing everything they were told to do by the former Building Official. They had spent \$88,000 to date for the project. She cited Municipal Code section 17.44.050, which did not specifically state that a building could not be intentionally torn down and rebuilt. If the Council denied the appeal, she requested reimbursement of the \$88,000 by the Town. Ms. Epstein respectfully requested that the Council approve the appeal.

Allan Epstein, 172 Austin Avenue, appellant, stated there were a number of errors and misstatements and requirements in the Acting Building Official's letter and the staff report that were not supported by the Municipal Code. He said the nonconformity would not be increased, but would be reduced. Staff agreed that the Municipal Code specifically allowed for nonconforming structures to be maintained while allowing an addition within the current setbacks. Section 17.44.050 stated major repairs and alterations that would not increase the degree of nonconformity were permitted. When the house was completed, it would look the same whether the old walls remained or were completely rebuilt, it was a distinction without a difference. The neighbors were supportive. He urged the Council to approve the appeal.

Gary Kohlsaot, architect, responded to a Council question regarding compliance with the guidelines and leaving the existing nonconforming walls. His concern, and that of the appellants, was that there were conflicting opinions. There were statements that only the wall framing needed to remain, the foundation and the roof could be removed, and the windows and doors could be reframed. If that were true, they could achieve a very good, well-constructed building. If the foundation were required to be maintained, as well as all the other structural members, then the home would be quite different. There would be problems with "settlement" of the home and other issues down the road.

Acting Building Official Michael Cully clarified that the foundation and wall would need to remain. If the existing foundation were a problem with the new foundation, it could be reinforced and supported by various means.

Mr. Kohlsaot, said if they were allowed to take the foundation down and support the walls, they could achieve their goal.

Acting Building Official Cully said routine visits to monitor and verify the wall was not removed would be necessary.

Mr. Movassate, Santiago Avenue, was a builder within the Town and spoke in support of the appeal.

Mayor Carlson closed the public hearing.

Council Member Jerry Carlson said there was the fairness test vs. the goodness of the community test. The appellants relied on the previous Building Official's advice, they paid the fees to Town, met all the conditions, and the "Town" said okay. When he considered whether any harm would be done if the appeal were granted, he believed the fairness test was more heavily weighted.

Vice Mayor Janz shared Council Member Carlson's opinion. He also believed keeping two walls or one wall was rather ridiculous to enable one to rebuild the entire house. He was encouraged to hear a revision to require 50% of the structure remain might be considered in the future. Nevertheless, he had a problem with the project because the

language said, “no nonconforming structure shall be moved, altered, enlarged, or reconstructed so as to increase the discrepancy.” He did not see the construction of a two-story building as a replacement of an existing structure. He viewed it as building a new construction and believed the law should be followed.

Council Member Marsala was in favor of allowing the project. The appellants were so far into the process and he did not believe they should be penalized by having to spend more money to redo the plans. He concurred with Council Member Carlson regarding fairness.

Mayor Carlson said if someone came before him with unapproved plans, the appellants would need to pass the credibility test, i.e., that he was convinced that the representation made to them indeed was made. He was convinced and was in favor of granting the appeal.

Vice Mayor Janz said he disagreed with the point made by the appellants that whatever the former Building Official said was correct and the law did not apply to their situation. He believed the law did apply. If it were true that by retaining the walls, the rest of the home could be built new and the nonconformity could remain, he did not see what difference it made to leave the walls up or take them down. Under those circumstances, he would approve the appeal.

Council Member McKeithen said she was leaning toward the human side. Because the neighbors were not objecting and the appellants had met with staff, followed up, were actually reducing the nonconformity, and had acted in good faith, she was in favor of granting the appeal

MOTION – to approve the appeal of the property owners of 172 Austin Avenue and overturn the decision of the Building Official

M/S J.Carlson/Marsala

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

The City Attorney would draft findings to be returned to the Council at its February 21, 2007, meeting.

Mayor Carlson called for a recess at 11:53 p.m. The meeting was reconvened at 11:56 p.m.

REGULAR AGENDA (Items 14 -20)

14. AUTHORIZATION TO ENTER INTO NEGOTIATIONS WITH CRW SYSTEMS FOR DEVELOPMENT OF A PURCHASE AGREEMENT FOR SUBSEQUENT CONSIDERATION AND APPROVAL BY THE COUNCIL

Assistant to the City Manager Wendé Protzman presented the staff report. The recommendation met both the needs of the Town and the desire of staff. Staff reviewed various permit tracking systems, spoke with colleagues, and believed the

CRW system would meet their needs. She indicated that Senior Building Inspector, Mike Wassman, and the Building Official from the Town of Hillsborough, John Mullins, were present to answer questions. The Town of Hillsborough had recently purchased a system from CRW and had begun training on the system.

John Mullins, Town of Hillsborough Building Official, responded to Council Member McKeithen that the Town of Hillsborough purchased all of the modules. The system allowed for coordinating with other departments. The permit tracking system was implemented first and plans to implement the code track and project track would begin in March. He emphasized that CRW was on site to help with the implementation process.

In response to Council Member Jerry Carlson, City Attorney Marc Hynes clarified the Town was purchasing a consultant, in effect, so there was no need to go out to bid.

MOTION – to authorize staff to enter into negotiations with CRW Systems for a Building Department Permit Tracking System and to develop a purchase agreement for further consideration

M/S McKeithen/J.Carlson Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

15. REQUEST FOR PROPOSALS FOR CONSULTANT SERVICES TO REVIEW THE ZONING CODE IN TERMS OF CONTINUITY, AMBIGUITIES, EXISTING INTERPRETATIONS, AND INDUSTRY STANDARDS

Mayor Alan Carlson suggested two items be added to the Scope of Work and Work Products, Required tasks to be undertaken, listed on Page 2 of the RFP: 1) Determine inconsistencies between provisions which might require Council action to be corrected; and 2) Make recommendations for provisions that are not currently in the code that might be considered industry standards.

Jeff Wise, Linden Avenue, said previously reference had been made that staff was preparing a list of interpretations or questions in the current Zoning Code to be submitted to Council for approval to provide consistency when responding to the public. He asked what the status was.

City Attorney Marc Hynes said there were some interpretation questions that had been documented that the consultant would look at in connection with finding internal inconsistencies.

Acting Building Official Michael Cully said he informally prepared some interpretations and had a better understanding that evening regarding how the department should be operating, i.e., following the general guidelines of the General Plan and the intent of zoning regulations to restrict and reduce building size.

Mr. Wise said everyone began the process of building a new home by meeting with the Building Official to ascertain how the plans would be received in the end. They were

looking for consistent interpretations that could be relied upon in order to make plans and move forward.

MOTION – to authorize the release of the RFP for consultant services to review the zoning code in terms of continuity, ambiguities, existing interpretations, and industry standards with two items to be added to the Scope of Work and Work Products – Required tasks to be undertaken – listed on Page 2 of the RFP: 1) Determine inconsistencies between provisions which might require Council action to be corrected; and 2) Make recommendations for provisions that are not currently in the code that might be considered industry standards.

M/S Janz/McKeithen

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

Mayor Carlson moved Item No. 18 forward to be heard before Item No. 16.

18. DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING COMMERCIAL ENVIRONMENTAL LANDSCAPE’S (CEL) LANDSCAPE MAINTENANCE AGREEMENT FOR TOWN HALL AREA AND DISCUSSION OF OPTIONS FOR RESTORING OR UPGRADING THESE LANDSCAPE AREAS

Public Works Director Duncan Jones presented the staff report and indicated there were two parts: 1) the level of maintenance that CEL was providing to the Town; and 2) the two landscape areas at the entrance to Lloyd Park. Options for the Lloyd Park area were to restore the previous landscape plan or upgrade it to a more manicured plan by hiring a landscape architect to redesign it.

Council discussion ensued regarding CEL’s failure to live up to the terms of the agreement. Recently, there was an improvement in service with the oversight of Public Works Superintendent Steve Tyler. Further discussion related to hiring a landscape architect and soliciting public input, especially in the Lloyd Park area, for the areas needing landscaping. With respect to the CEL agreement, Council suggested reviewing CEL’s service in three months.

Council Member McKeithen said there was a 15-day termination clause and suggested incorporating the new CEL Work Schedule into the agreement.

Rosemary Maulbetsch, Atherton, said her major concern was one of time. She did not think CEL had been very reliable in the past and recommended staff meet with CEL every week to ensure the work was completed as promised. Additionally, she suggested that someone from the Public Works Department should meet with a specific person in Caltrain who was responsible for the area around the train depot to ensure Caltrain cleaned up the area.

MOTION – to continue with the Commercial Environmental Landscape Maintenance Agreement with the understanding of continuous oversight and progress evaluations on a 3-month basis

M/S McKeithen/Janz

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

MOTION – to develop an RFP for a landscape architect to help facilitate the design of the area north of Town Hall from Fair Oaks Avenue (from the rear of the Police Department to the Lloyd Park Gates) and to facilitate the conduct of public meetings

M/S McKeithen./Janz

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

16. REQUEST FOR PROPOSALS FOR CONTRACT ENGINEERING SERVICES FOR THE PURPOSE OF REVIEWING GRADING AND DRAINAGE PLANS

Council Member McKeithen said a critical element was missing from the professional services agreement, a conflict of interest provision that stated, “The engineer shall not perform any work whatsoever as an independent contractor for a client, public or private, in connection with any project located or to be located in whole or in part within the Town. It is understood and agreed that neither engineer nor or any of its principals shall have any legal or equitable interest in subdividable land or engage in any speculative development located or operating within the city.” She asked the City Attorney to review the agreement and determine what would be appropriate to augment it.

Staff briefly responded to Council questions.

MOTION – to authorize the release of the Request for Proposals for consulting municipal engineering services to assist the Town in the review of plan checks and development applications related to grading, drainage, and other possible engineering fields; Further, to withhold circulating the professional services agreement until Council has an opportunity to review the agreement as revised to include a Conflict of Interest clause

M/S McKeithen/Janz

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

17. DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING THE COMMITTEE/COMMISSION APPOINTMENT PROCESS

MOTION – to continue the item to the City Council meeting of February 21, 2007

M/S J.Carlson/Janz

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

19. DISCUSSION AND POSSIBLE ACTION REGARDING THE ENVIRONMENTAL PROGRAMS COMMITTEE

MOTION – to continue the item to the City Council meeting of February 21, 2007

M/S Janz/J.Carlson

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

20. DISCUSSION AND POSSIBLE ACTION REGARDING THE SAN MATEO COUNTY CITY SELECTION COMMITTEE SELECTION OF REPRESENTATIVES

Mayor Alan Carlson asked Vice Mayor Janz to represent the Council on the City Selection Committee.

MOTION – to appoint Vice Mayor Janz to attend the San Mateo County City Selection Committee meeting on January 26, 2007, and to authorize Council Member Janz to vote for city representatives to certain county commissions on behalf of the Council

M/S Marsala/J.Carlson

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

21. PUBLIC COMMENTS

There were no public comments.

22. ADJOURNMENT

Mayor Alan Carlson adjourned the meeting at 1:00 a.m.

Respectfully submitted,

**Kathi Hamilton
Acting City Clerk**